

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

TRACY COLE and TALEAVIA COLE

Plaintiffs.

v.

23-CV-1321

CITY OF WAUWATOSA, et. al.

Defendants.

CIVIL L.R. 7(H) EXPEDITED NON-DISPOSITIVE MOTION
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 7(b) and FEDERAL RULES OF
APPELLATE PROCEDURE 8(a) TO STAY PROCEEDINGS

Plaintiffs, by and through their undersigned Counsel, respectfully move this Honorable Court pursuant to Federal Rule of Civil Procedure 7(b) and Federal Rule of Appellate Procedure 8(a), to stay all proceedings in this matter until the United States Court of Appeals for the Seventh Circuit in case 23-2135, as filed by Plaintiffs Tracy Cole and Taleavia Cole, have resolved the appeal of this Court's dismissal of its claims against Defendants in its Decision and Order filed August 24, 2022. (See Wis. E.D. *Knowlton et. al. v. City of Wauwatosa* 20-cv-1660, ECF #190).

Plaintiffs request this court to stay the proceedings during the pendency of the current appeal of the judgment of dismissal to the United States Court of Appeals for the Seventh Circuit in case 23-2135. Currently, all briefings in the Court of Appeals for the Seventh Circuit have been filed and parties are expected to receive oral argument dates soon. Additionally, Plaintiffs are compelled to file this stay as Defendants Counsel sent a safe harbor letter January 10, 2024, threatening Rule 11 sanctions despite representing Defendants in the Seventh Circuit matter. (See Decl. Kimberley Cy. Motley).

On August 24, 2022, this court issued a decision and order (*Knowlton* 20-cv-1660, ECF #190) granting in part and denying in part Defendant's motion to dismiss Plaintiff's Fourth Amended Complaint. As argued on appeal by Plaintiffs, the Court's judgment indicated that it was dismissing claims against individual Defendants with prejudice as such claims could only be understood as official capacity claims. (*Id.* at 6 – 10). Plaintiffs argue in the appeal that the claims dismissed against the Defendant's in this manner was in error.

On June 7, 2023, Plaintiffs timely filed a notice of appeal before this Honorable Court in *Knowlton, et. al. v. Wauwatosa, et. al.*, case 20-cv-1660, commencing an appeal from this court's judgment to the United States Court of Appeals for the Seventh Circuit. (See Wis. E.D. *Knowlton v. Wauwatosa matter* 20-cv-1660, ECF #425). The appeal for the Seventh Circuit Court of Appeals is proceeding with Plaintiff-Appellant's opening brief filed in the court on December 4, 2023 (See *Knowlton et. al., v. City of Wauwatosa*, 7th Cir. Ct. of Appeals, case 23-2135, Dkt. 23), Defendant-Appellee's response brief was filed on December 28, 2023 (*Id.* at Dkt. 33), and Plaintiff-Appellant's Reply Brief was filed on January 22, 2024 (*Id.* at Dkt. 42).

This Court has substantial discretion to control its docket including the inherent power to stay proceedings. The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).

Here, parties filed in the Seventh Circuit Court of appeals their opening brief, response brief, as well as the reply brief and are awaiting the dates that oral arguments will be scheduled. (*Knowlton*, 7th Cir. Ct. of Appeals, case 23-2135, Dkts. 23, 33, and 42) Given the anticipated brevity of the stay, Defendants will not be irreparably harmed by the stay. Furthermore, in this matter before the court there are currently no scheduling orders, no discovery has been exchanged,

and both parties have not shared initial disclosures in this matter. Moreover, staying this matter furthers the public interest in allowing civil disputes to move forward in a fair manner and will promote an efficient use of judicial resources.

WHEREFORE, Plaintiffs, Tracy Cole and Taleavia Cole, respectfully request this Court to grant their motion to stay proceedings in this case until such time as all appeals on this matter have concluded.

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